

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8062 of 1999

with

SPECIAL CIVIL APPLICATION NOS. 8064 OF 1999, 8065 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

LAXMIDEVI ASHARAMJI

Versus

KIRTIKUMAR PRAHLADBHAI PATEL

Appearance:

MR AJ PATEL for Petitioners

MR DC DAVE for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 01/11/1999

ORAL JUDGEMENT

All these three writ petitions are proposed to be disposed of by a common order at the stage of admission. Shri A.J. Patel learned counsel for the petitioners and Shri D.C. Dave, learned counsel for the respondent have been heard. Affidavit and counter affidavit have been filed in Special Civil Application No. 8062 of 1999. In this petition the order of the revisional authority

contained in Annexure-F is under challenge and the prayer is to set aside the order of the revisional authority and restore the orders as contained in Annexures D and E.

In these three writ petitions five Wills, one unregistered, three registered and one registered probated Will are under challenge on the basis of which revenue entries were made. The contention of Shri Patel has been that since the earlier Will of 1981 was cancelled by Bai Jivtiben in one of her registered Wills executed in 1991, the Will of 1981 became ineffective even though it was probated. He therefore contended that the revenue entries should have been made on the basis of subsequent three registered and one unregistered Will. The order of the revisional authority is under challenge on the ground that it has wrongly quashed the orders of the Deputy Collector passed in favour of the petitioners giving preference to probated Will.

It is also found that two Civil Suits are pending in the City Civil Court, Ahmedabad. Civil Suit No. 3079 of 1997 was filed by Kirtikumar Prahladbhai Patel and another against the defendants Shri Asharam Maharaj and others in which relief for permanent injunction was sought for protecting the possession of the plaintiffs. Another Civil Suit No. 4443 of 1998 was filed by the earlier defendants who are plaintiffs in the subsequent suit. The Will registered and unregistered and probated are under challenge in the suit of 1998. It is for the Civil Court to decide as to which Will prevails on the facts and circumstances of the case and it is for the Civil Court to consider and decide whether preference has to be given to probated Will or subsequent registered Will which has cancelled expressly the previous Will of 1981. The question of title was neither to be decided by the Deputy Collector nor by the Collector nor by the revisional authority. Since this question is already pending before the Civil Court, hence the question of title and validity of the Wills will be decided by the competent Civil Court.

So far as the revenue entries are concerned, the suit of the respondents was filed on 7.7.1997. The revenue entries, as they stood on this date, shall be allowed to prevail for fiscal purpose and not for the purpose of deciding the question of title or ownership arising out of such entry. Shri D.C. Dave, has informed that on 7.7.1997 entries were made in favour of the respondents. If this is so then the entries which stood on 7.7.1997 shall continue to remain on record but not for the purpose of ownership or title arising out of the

Wills registered, unregistered or Probated. The respondents are free to go on paying land revenue in accordance with these entries till the dispute is finally decided by the competent Civil Court. It is clarified at this stage that payment of land revenue by the respondents will not per se constitute evidence of ownership or title in their favour.

The Civil Court will not be influenced by this judgement on the question of title or ownership arising out of the disputed Wills. With these observations, all the three petitions are finally disposed of at the admission stage.

(D.C. SRIVASTAVA,J)

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